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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

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**IN RE GOOGLE PLAY STORE
ANTITRUST LITIGATION**

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THIS DOCUMENT RELATES TO:

Epic Games, Inc. v. Google LLC et al.,
Case No. 3:20-cv-05671-JD

Case No. 3:21-md-02981-JD
**NON-PARTY WARNER BROS.
DISCOVERY, INC.'S REQUEST TO
SEAL HIGHLY CONFIDENTIAL
INFORMATION**

Honorable James Donato

1 Non-party Warner Bros. Discovery, Inc. (“WBD”) respectfully moves under Civil Local
 2 Rule 79-5 and the Court’s Order, D.I. 727, to seal a trial exhibit that contains WBD confidential
 3 information and to seal the courtroom for limited portions of testimony related to such WBD
 4 confidential information.

5 On Saturday November 11, 2023, at 12:06 a.m. PST, during the Veterans Day holiday,
 6 Google LLC (“Google”) provided email notice to WBD that it intends to use a trial exhibit in open
 7 court on Monday, November 13, 2023, that has been designated as NON-PARTY HIGHLY
 8 CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY under the Protective Order. D.I. 248.
 9 The Protective Order generally requires at least *four business days’ notice* of the intent to use such
 10 material at trial. Google has provided WBD *zero business days’ notice*. This morning, WBD was
 11 informed by Google that “[p]ursuant to the Court’s instructions,” WBD has even less than a full
 12 day to file this motion.

13 If Google or any other party to the litigation is permitted to proceed with using the trial
 14 exhibit and testimony concerning it, WBD respectfully requests that the Court seal the trial exhibit
 15 and temporarily seal the courtroom during testimony concerning the trial exhibit. WBD recognizes
 16 the strong public interest in access to trial proceedings and judicial records. Nonetheless, sealing
 17 of judicial records is appropriate when “compelling reasons” overcome that presumption. *See*
 18 *Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006). Non-party
 19 interests in confidential information are particularly strong. *See In re Adobe Systems, Inc. Sec.*
 20 *Litigation*, 141 F.R.D. 155, 161-62 (N.D. Cal. 1992).

21 The trial exhibit and testimony concerning it will reveal highly confidential business
 22 information, including WBD subscriber information. Throughout this litigation, WBD as a non-
 23 party has consistently and proactively taken steps to protect its confidential information. For
 24 example, in connection with prior motions to seal concerning similar confidential information,
 25 WBD submitted declarations from its Chief Executive Officer and President of Global Streaming
 26 and Games, Jean-Briac Perrette, as well as its Chief Financial and Strategy Officer for Streaming,
 27 Joshua Walker, explaining the sensitivity of such information and the harm it would cause WBD
 28 if such information were disclosed to competitors or to the public. These declarations are attached

1 hereto in support of this motion.¹ See August 16, 2022 Perrette Declaration ¶¶ 4-10; July 5, 2023
 2 Walker Declaration ¶¶ 4-10; August 1, 2023 Walker Declaration (D.I. 563) ¶¶ 4-10. These
 3 declarations outline the very real, concrete harm that WBD will suffer from the disclosure of such
 4 confidential information, which is sufficient to meet the “compelling reasons” standard. *In re*
 5 *Electronic Arts*, 298 Fed. Appx. 568, 569 (9th Cir. 2008); *Apple Inc. v. Samsung Elecs. Co.*, 727
 6 F.3d 1214, 1226 (Fed. Cir. 2013); *Powertech Tech., Inc. v. Tessera, Inc.*, 2012 U.S. Dist. LEXIS
 7 75831, at *4 (N.D. Cal. May 31, 2012).

8 Based on the foregoing, WBD respectfully requests that the following trial exhibit be
 9 sealed and for the courtroom to be temporarily sealed during testimony concerning the trial exhibit.

10 Exhibit 11 (Bates Number)	12 Portion sought 13 to be sealed	14 Reasons for sealing request
12 Exhibit 5674-016 (GOOG- 13 PLAY-000437834.R)	14 Seal entirety	15 Includes confidential subscriber 16 information belong to WBD 17 regarding the Google Play store on 18 the Android platform; this 19 information is not available outside 20 of WBD; if disclosed it could be 21 used to harm WBD’s competitive 22 position and provide competitors an 23 unfair advantage in the 24 marketplace.

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 19 Dated: November 11, 2023

20 Respectfully submitted,

21 VENABLE LLP

22 By: /s/ Philip T. Sheng
 23 Philip T. Sheng (SBN 278422)
 24 David E. Fink

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 27 *Attorneys for Non-Party Warner Bros.*
 28 *Discovery, Inc.*

1 Because WBD was not given sufficient notice of Google’s intent to use WBD confidential
 2 information at trial, WBD relies on these prior declarations in support of this motion.